

House Engrossed

**FILED**

**KEN BENNETT**

**SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

CHAPTER 51

# **HOUSE BILL 2270**

AN ACT

AMENDING SECTION 15-103, ARIZONA REVISED STATUTES; RELATING TO THE STATE BOARD OF EDUCATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-103, Arizona Revised Statutes, is amended to  
3 read:

4 15-103. School districts; financial mismanagement;  
5 intervention; definitions

6 A. The state board of education shall review allegations of school  
7 district insolvency and gross mismanagement. The state board shall give the  
8 school district an opportunity to respond to these allegations at a public  
9 meeting. If the state board determines that the school district is insolvent  
10 or has grossly mismanaged its finances, the state board shall appoint a  
11 receiver OR FISCAL CRISIS TEAM for that school district.

12 B. The state board shall find a school district insolvent if it finds  
13 one or more of the following:

14 1. The school district is unable to pay debts as they fall due or in  
15 the usual course of business.

16 2. The salaries of any teachers or other employees have remained  
17 unpaid for forty-five days.

18 3. The tuition due another school district or other state institution  
19 remains unpaid on or after January 1 of the year following the school year it  
20 was due and there is no dispute regarding the validity or amount of the  
21 claim.

22 4. The school district has defaulted in payment of its bonds or  
23 interest on bonds or in payment of rentals due any state or federal authority  
24 or private business for a period of sixty calendar days and no action has  
25 been initiated within that period of time to make payment.

26 5. The school district has contracted for any loan not authorized by  
27 law.

28 6. The school district has accumulated and has operated with a deficit  
29 equal to five per cent or more of the school district's revenue control limit  
30 for any fiscal year within the past two fiscal years or the conditions  
31 prescribed in section 15-107 have occurred.

32 7. The school district's warrants have not been honored for payment by  
33 the school district's servicing bank or by the county treasurer and the  
34 warrants have remained unpaid for a period of more than sixty calendar days.

35 C. ~~No~~ A school district shall NOT be deemed to be insolvent pursuant  
36 to subsection B of this section if the circumstances are the result of the  
37 failure of the state to make any payments of monies due the school district  
38 at the time payment is due.

39 D. The state board of education shall have jurisdiction over all  
40 petitions requesting that a school district be placed in receivership and a  
41 receiver be appointed OR THAT A FISCAL CRISIS TEAM BE APPOINTED because of  
42 the school district's alleged insolvency or gross mismanagement. The state  
43 board shall have the burden of demonstrating by a preponderance of the  
44 evidence that the school district is insolvent or is engaged in gross  
45 mismanagement.

1 E. If the state board of education finds that the school district is  
2 insolvent or has engaged in gross mismanagement, the state board shall MAY  
3 place the school district in receivership and appoint a receiver recommended  
4 by the state board. The state board shall develop and adopt a list of  
5 qualified receivers to be appointed by the board.

6 F. On appointment, the receiver may perform any of the actions  
7 prescribed in paragraphs 1 through 11 of this subsection and shall begin a  
8 full review and investigation of the school district's financial affairs and  
9 submit to the state board of education a detailed report listing the findings  
10 of that investigation that shall include a financial improvement plan and  
11 budget that details how the school district will eliminate any continued  
12 gross financial mismanagement and achieve financial solvency. The plan shall  
13 include a proposed timeline for achieving financial solvency. The receiver  
14 shall submit the report within one hundred twenty days after the receiver's  
15 appointment. The financial improvement plan approved by the state board of  
16 education may authorize the receiver to do any of the following:

17 1. Override any decisions of the school district's governing board or  
18 the school district superintendent, or both, concerning the management and  
19 operation of the school district, and initiate and make decisions concerning  
20 the management and operation of the school district.

21 2. Attend any and all meetings of the school district's governing  
22 board and administrative staff.

23 3. Supervise the day-to-day activities of the school district's staff,  
24 including reassigning the duties and responsibilities of personnel in a  
25 manner that, in the determination of the receiver, best suits the needs of  
26 the school district.

27 4. Place on extended leave, suspend or terminate for cause the school  
28 district's superintendent or chief financial officer, or both. The receiver  
29 is not authorized to provide a severance or buyout package to the school  
30 district's superintendent or chief financial officer if the school district  
31 is placed into receivership by the state board of education. A person  
32 terminated pursuant to this paragraph may appeal the receiver's decision to  
33 the state board of education if an appeal is filed with the state board  
34 within thirty days of receiving notice of the termination.

35 5. Authorize pupils to transfer from schools operated by the school  
36 district to schools operated by another school district that is not currently  
37 in receivership.

38 6. Appoint a chief educational officer who shall possess the powers  
39 and duties of a school district superintendent. A chief educational officer  
40 who is appointed pursuant to this paragraph shall hold a valid administrative  
41 certificate.

42 7. Appoint a chief fiscal officer who shall possess the powers and  
43 duties of the school district's chief school business official and any other  
44 duties regarding budgeting, accounting and other financial matters that are  
45 assigned to the school district by law.

1           8. Appoint a competent independent public accountant to audit the  
2 accounts of the school district.

3           9. Reorganize the school district's financial accounts, management and  
4 budgetary systems to improve financial responsibility and reduce financial  
5 inefficiency within the district.

6           10. Establish school district fiscal guidelines and a system of  
7 internal controls, including internal administrative controls and internal  
8 accounting controls, with provisions for internal audits.

9           11. Cancel or renegotiate any contract, other than contracts of  
10 certificated teachers who have been employed by the school district in the  
11 capacity of a certificated teacher for more than one year immediately before  
12 the date the receiver was appointed, to which the governing board or the  
13 school district is a party if the cancellation or renegotiation of the  
14 contract will produce needed economies in the operation of the district's  
15 schools. The receiver may refuse to reemploy any certificated teacher who  
16 has not been employed by the school district for more than the major portion  
17 of three consecutive school years as provided in section 15-536.

18           G. The receiver's power, authority and duties shall be effective on  
19 the date of the receiver's appointment by the state board of education. The  
20 receiver shall perform the receiver's duties according to the instructions of  
21 the state board of education order and according to law. The receiver shall  
22 promptly report any violations of law, including a violation of the uniform  
23 system of financial records, to the state board of education.

24           H. On review and approval of the state board of education, the  
25 receiver shall take all necessary steps to implement the financial  
26 improvement plan and budget utilizing those powers identified in the plan as  
27 prescribed in subsection F of this section.

28           I. The salary and benefits of the receiver and any officers or  
29 employees appointed by the receiver shall be paid by the school district.  
30 The state board of education shall determine the salary for the receiver and  
31 any officers or employees appointed by the receiver based on amounts  
32 recommended by the state board.

33           J. The state board of education shall remove the school district from  
34 receivership and dismiss the receiver and dismiss any officer or employee  
35 appointed by the receiver thirty days after all of the following have  
36 occurred:

37           1. The auditor general certifies that the school district has been  
38 financially solvent for one fiscal year.

39           2. The auditor general certifies that the school district's financial  
40 records are in compliance with the uniform system of financial records and  
41 generally accepted accounting principles.

42           3. The receiver certifies that the school district is no longer  
43 engaged in gross mismanagement.

44           4. The state board of education has determined that the school  
45 district is able to pay its debts as those debts become due.

1 K. Beginning ninety days after the submission of the first report  
2 prescribed in subsection F of this section, the receiver shall submit a  
3 quarterly progress report to the state board of education. The state board  
4 of education shall review the expenses and costs of the receiver at least  
5 once each calendar quarter.

6 L. The state board of education shall formally review the receiver's  
7 progress every six months. If, based on the quarterly progress reports, the  
8 state board determines that the receiver's progress is insufficient, the  
9 state board may remove the current receiver and appoint another receiver for  
10 the school district.

11 M. The state board of education may dismiss the receiver for cause or  
12 on a majority vote of no confidence in the receiver of the state board.

13 N. The school district shall indemnify the receiver and any officer or  
14 employee appointed by the receiver who is made or threatened to be made a  
15 party to any litigation by reason of their status under this section if the  
16 receiver, officer or employee acted in good faith and in a manner that the  
17 receiver, officer or employee reasonably believed to be consistent with the  
18 best interest of the school district and if the receiver, officer or employee  
19 had no reasonable cause to believe that the conduct was unlawful.

20 O. During the period of time that the school district is in  
21 receivership, no member, officer, employee or agent of the school district  
22 may enter into any contract or incur any liability on behalf of the school  
23 district for any purpose if the amount of the contract or liability exceeds  
24 the receiver's authorized financial plan and budget for the school district.  
25 The receiver may discipline, including, if warranted, imposing a suspension  
26 from duty without pay, removal from office or termination of, any school  
27 district employee or officer who violates this subsection.

28 P. This section does not create a private cause of action against the  
29 school district or its officers, directors, board members or employees.

30 Q. The assumption of control of the school district by the receiver  
31 shall in no way interfere with the election or reelection of school district  
32 governing board members.

33 R. This section shall not interfere with a school district's ability  
34 to declare bankruptcy under federal law.

35 S. The state board of education shall continue to monitor and offer  
36 technical assistance to a school district for two years after its removal  
37 from receivership.

38 T. All information received and records or reports kept by the state  
39 board of education during an investigation resulting from a complaint against  
40 a receiver appointed pursuant to this section or section 15-107 are  
41 confidential and not a public record.

42 U. The state board of education or the department of education shall  
43 immediately notify the auditor general if the board or department has  
44 knowledge that a superintendent or chief financial officer who was employed  
45 at the school district at the time the school district was placed in

1 receivership is currently employed in another school district or charter  
2 school in this state.

3 V. NOTWITHSTANDING ANY OTHER LAW, A FISCAL CRISIS TEAM APPOINTED  
4 PURSUANT TO THIS SECTION SHALL BE SUBJECT TO SECTION 15-107, SUBSECTIONS E  
5 THROUGH H AND A SCHOOL DISTRICT THAT IS ASSIGNED A LEVEL TWO FISCAL CRISIS  
6 TEAM PURSUANT TO THIS SECTION SHALL BE SUBJECT TO SECTION 15-107, SUBSECTIONS  
7 J, K AND L.

8 ~~V.~~ W. For the purposes of this section:

9 1. "FISCAL CRISIS TEAM" MEANS EITHER:

10 (a) A LEVEL ONE FISCAL CRISIS TEAM WITH THE DUTIES AND AUTHORITY  
11 PRESCRIBED IN SECTION 15-107, SUBSECTION D, PARAGRAPH 2.

12 (b) A LEVEL TWO FISCAL CRISIS TEAM WITH THE DUTIES AND AUTHORITY  
13 PRESCRIBED IN SECTION 15-107, SUBSECTION D, PARAGRAPH 3.

14 ~~1.~~ 2. "Gross mismanagement" means that the school district's officers  
15 or employees committed or engaged in gross incompetence or systemic and  
16 egregious mismanagement of the school district's finances or financial  
17 records.

18 ~~2.~~ 3. "Notice" means written notice personally served or delivered by  
19 certified mail, return receipt requested.

20 ~~3.~~ 4. "Receiver" means an individual appointed by the state board of  
21 education from the persons recommended by the state board for the purpose of  
22 managing a school district placed in receivership by the state board of  
23 education.

24 ~~4.~~ 5. "Receivership" means the state or condition of being under the  
25 control of the receiver appointed by the state board of education.

26 ~~5.~~ 6. "Superintendent" means the chief executive officer of the  
27 school district.

APPROVED BY THE GOVERNOR MARCH 20, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 20, 2012.

Passed the House February 13, 2012

by the following vote: 57 Ayes,

0 Nays, 2 Not Voting  
1 vacant

Speaker of the House  
Pro Tempore

Cheryl Laube  
Chief Clerk of the House

Passed the Senate March 15, 2012

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Charmian Bellin  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

19<sup>th</sup> day of March, 20 12

at 2:37 o'clock P M.

[Signature]  
Secretary to the Governor

Approved this 20<sup>th</sup> day of

March

at 10:40 o'clock A M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 20<sup>th</sup> day of March, 20 12

at 4:53 o'clock P M.

[Signature]  
Secretary of State

H.B. 2270